

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

<p>Applicant: Thomas Lapcevic</p> <p>Title: SYSTEM AND METHOD FOR BRANDING A FACILITY</p> <p>Appl. No.: 09/598,506</p> <p>Filing Date: 06/21/2000</p> <p>Examiner: Daniel Lastra</p> <p>Art Unit: 3622</p>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"><b><u>CERTIFICATE OF FACSIMILE TRANSMISSION</u></b> I hereby certify that this paper is being facsimile transmitted to the <b>United States Patent and Trademark Office,</b> <b>Alexandria, Virginia</b> on the date below.</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; text-align: center;"><i>Todd A. Rathe</i> (Printed Name)</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; text-align: center;">(Signature)</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px; text-align: center;">(Date of Deposit)</div>
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**REPLY BRIEF ON APPEAL**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Reply Brief is in response to the Examiner's Answer mailed on February 4, 2008. For the following reasons, Appellant respectfully requests that the Board reverse all claim rejections and indicate that a Notice of Allowance respecting all pending claims be issued.

**I. Neither Dejaeger nor Stern, alone or in combination, disclose or suggest a computer assisted method wherein remote facility personnel may enter on a playlist, identifiers of advertisement content related to the remote facility that are transmitted to the remote facility from a central computer and broadcast with free entertainment.**

In the Appeal Brief, Appellant pointed out several distinctions between the computer assisted method recited in independent claims 1, 8 and 14 and the

methods disclosed by Dejaeger and Stern. One of the key points made by Appellant was that neither Dejaeger nor Stern, alone or in combination, disclose or suggest a computer assisted method wherein remote facility personnel may enter on a play list housed at the central facility identifiers of advertisement content related to the remote facility that are transmitted to the remote facility from a central computer and broadcast with free entertainment.

Unfortunately, such points may have become muddled in a confluence of tangential arguments such as what the Examiner enjoys and considers to be "entertainment." Regardless of whether the Examiner can identify unique individuals in this world that enjoy taking surveys, such issues are irrelevant to the determination of the patentability of independent claims 1, 8 and 14 as well as their dependent claims. The test for patentability is whether the claim limitations, when given their plain objective meaning, and not the Examiner's subjective construction, are disclosed by the prior art.

Each of claims 1, 8 and 14 recite the following key limitations:

1. A central facility having a playlist that controls broadcasting of free entertainment and advertising content within a remote facility;
2. remote facility personnel entering on the playlist the identification of the advertising content; AND
3. the central facility pushing the playlist to the remote facility.

Said another way, claims 1, 8 and 14 are each directed to a computer assisted method which permits remote facility personnel to access a central facility playlist and to customize the combination of advertising and entertainment content that is transmitted from the central facility to the remote facility and that is played at the remote facility. The remote facility personnel is provided with the ability to pick and choose what advertising content stored at the central facility is transmitted from the central facility and played with free entertainment content at the remote facility. Again, (1) the advertising content and the entertainment content forming a playlist

are housed or contained at the central facility AND (2) the remote facility personnel enters or chooses what advertising content is to be transmitted from the central facility and broadcast along with free entertainment content at the remote facility.

Neither Dejaeger nor Stern, alone or in combination, disclose or suggest a computer assisted method wherein: (1) the advertising content and the entertainment content forming a playlist are housed or contained at the central facility AND (2) the remote facility personnel enters or chooses what advertising content is to be transmitted from the central facility and broadcast along with free entertainment content at the remote facility.

Dejaeger merely discloses a system in which a checkout terminal at a retail store presents ONLY advertising content to a customer. Even assuming, arguendo, that **one of ordinary skill in the art** would consider the presentation of surveys to a customer as "entertainment," nowhere does Dejaeger disclose that the "entertainment" content and the advertising content are housed or contained in a central facility and then **transmitted** to a remote facility based upon play list selections from personnel at the remote facility. Nowhere does Dejaeger disclose that personnel at the individual department store pick and choose advertising content from a play list that is housed at a central facility, wherein the selected advertising content along with the "entertainment" content is transmitted to the department store from the central facility.

In response to such points, the Examiner attempts to argue that:

Dejaeger teaches an external network system 56 (see figure 1) that may be located in a centralized office associate it with the retailer and provides a centralized source for electronic updating the various databases associated with the central server 42 (see Dejaeger figure 1) at each of the retailer's stores.

(Examiner's Answer, page 10). Similarly, the Examiner argued that:

Dejaeger teaches that retailers can configure the advertisements to display in a retail terminal where said advertisements are related to product and/or services

sold or periodic sales or discounts offered by said retailer  
(See Dejaeger col 7, lines 20-30 and col 15, lines 5-15).

(Examiner Answer, page 11).

However, the Examiner's argument completely misses the mark. Although it may be true that Dejaeger discloses that the central server 42 is electrically coupled to an external network system 56 for updating the various databases of the central server 42 (see column 8, lines 1-7), this is NOT what the claims recite. In contrast, the claims recite that the remote facility personnel access the central facility or the central network computer playlist and identify advertising content to be transmitted to and broadcast at the remote facility. In the system of Dejaeger, the actual selection of advertising content to be played at the checkout terminal is done at the remote facility itself, central server 42, and NOT at the external network system 56 of Dejaeger (see column 9 line 55-column 10, line 14). Dejaeger requires that even unused advertising content be stored at the department store central server 42.

Stern does not satisfy these clear deficiencies of Dejaeger. Like Dejaeger, Stern does not disclose a computer assisted method which provides remote facility personnel the ability to access a central facility playlist and to pick and choose advertising content **on** the central facility playlist, wherein the selected advertising content is subsequently transmitted along with free entertainment content as part of a playlist to be broadcast at the remote facility. In contrast to claims 1, 8 and 14 which are effectively directed to a TWO-WAY computer assisted method in which an advertising content selection is transmitted from a remote facility (the remote facility personnel) to the central facility and wherein a playlist including the selected advertising content is transmitted from the central facility to the remote facility, Stern merely discloses a ONE-WAY system. In Stern, audiovisual content is merely pushed to commercial sales outlets from a network management Center 110. Appellants' specifically point to Figure 1 itself with illustrates the commercial sales outlet 130 as only having a **receiver**/decoder 135 (note that it is not described as a transmitter or sender). Appellants' note that the communication arrow in Figure 1A is only ONE-AWAY from communication network 125 to the commercial sales outlet.

In response, the Examiner attempts to gloss over such clear deficiencies of Stern by arguing that:

Stern teaches a retailer's central server 160 (see Stern figure 1b) connected to an external network computer NMC 110 (see Stern figure 1b), where said external network computer 110 provide a centralized source for electronic updating of the various database (see Stern col 28, lines 44-55), where the retailer outlet ((See Stern figure 1a, item 135) connects to the central server 110 (see figure 1A) via the Internet (see col 10, lines 45-60) and where the commercial entity (See figure 1a, item 130) communicates with the NMC server so said server updates the products of said commercial entity (see Stern col 27, lines 20-30).

(Examiner's Answer, pages 10-11) (Emphasis Added).

Once again, the updating is only one way. It is the NMC operator, NOT remote facility personnel and NOT personnel at the commercial sales outlet 130, that enters on a playlist at NMC 110 what products are to be transmitted (one way) to the commercial sales outlet 130. (See column 5, lines 45-47 and column 5, lines 61-64). Although Stern indicates that the commercial entity provides the NMC operator a monthly list of titles to be updated along with key contact names of video manufacturers (see column 27, lines 21-23), providing a list of titles via a phone call, via mail or the like is quite distinct from identifying advertising content on a playlist at a central facility.

Even more importantly, the updating that the Examiner attempts to rely upon is that of PRODUCTS (not advertising content) at the commercial entity database. The list of titles provided to the NMC operator are those titles of movies and music to be played at a store (such as a BEST BUY store). Nowhere does Stern disclose that personnel at the department store actually choose advertising content on a play list at NMC 110. Because neither Dejaeger nor Stern, individually, disclose the limitations of Independent claims 1, 8 and 14, their hypothetical combination also cannot possibly result in the computer assisted methods recited in claims 1, 8 and 14. Accordingly, the rejection of claims 1, 8 and 14 should be reversed. The

rejection of claims 2-7, 9-13 and 15-19, which depend from such Independent claims should be reversed for the same reasons.

## **II. Conclusion**

In view of the foregoing, the Appellant submits that Claims 1-19 are not properly rejected under 35 U.S.C. § 103(a) as being as being unpatentable over U.S. Patent 6456,981 (Dejaeger) in view of U.S. Patent 6,553,404 (Stern) and are therefore patentable. Accordingly, Appellant respectfully requests that the Board reverse all claim rejections and indicate that a Notice of Allowance respecting all pending claims should be issued.

### **Summary**

For the foregoing, it is submitted that the Examiner's rejections are erroneous, and reversal of the rejections is respectfully requested.

Dated this 4<sup>th</sup> day of April, 2008.

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Respectfully submitted,

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